SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 17, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-79 Filed 1-2-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30439]

Gulf & Mississippi Railroad Corp. Purchase (Portion); Exemption; Illinois Central Gulf Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the purchase by Gulf & Mississippi Railroad Corporation of 713 miles of track known as the East Mississippi Lines from Illinois Central Gulf Railroad Corporation from the requirements of 49 U.S.C. 10901.

DATES: This exemption is effective on February 4, 1985. Petitions for reconsideration must be filed by January 23, 1985. Petitions for stay must be filed by January 14, 1985.

ADDRESSES: Send pleading referring to Finance Docket No. 30439 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Betty Jo Christian, Steptoe & Johnson Chartered, 1250 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision write to T.S. InfoSystems, Inc., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 13, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Lamboley dissented with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85-75 Filed 1-2-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review by OMB

December 28, 1984.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available);

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Pub. L. 96-511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry *and* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice Agency Clearance Officer: Larry E. Miesse, 202/633-4312.

New Collection

(1) Larry E. Miesse, 202/633-4312

(2) Bureau of Justice Assistance, Department of Justice

(3) Crimianl Justice Block Grants

(4) None

(5) Annually

(6) State and local governments. Information will be collected to comply with the requirements of the Justice Assistance Act that states and local recipients of block grant funds submit performance reports. Information will be used by the Bureau of Justice Assistance as part of its report to the President and the Congress as also required by the Act.

(7) 600 respondents

(8) 600 burden hours

(9) Not applicable under 3504(h)

(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4313

(2) Civil Rights Division, Department of Justice

(3) Procedures for the Administration of Section 5 of the Voting Rights Act of 1985, Proposed Revision of Procedures

(4) None

(5) On occasion

(6) State and local governments. Jurisdictions under the Voting Rights Act are required to obtain preclearance from the Attorney General before instituting changes affecting voting. They must convince the Attorney General that changes are not racially discriminatory. These procesures facilitate the provision of information that will enable the Attorney General to make the required determination.

(7) 1,200 respondents

(8) 30,000 burden hours

(9) Not applicable under 3504(h)

(10) Robert Veeder—395-4814

Larry E. Miesse,

Agency Clearance Officer, Department of Justice.

[FR Doc. 85-73 Filed 1-2-85; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Decree in Clean Water Act Enforcement Action; Alto-Tronics Corp.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Alto-Tronics Corporation*, Civil Action No. 84-4073-G (D.Mass.) has been lodged with the United States District Court for the District of Massachusetts. The consent decree requires the defendant to install pollution control equipment and comply with federal and local pretreatment requirements under the Clean Water Act, 33 U.S.C. 1317 and to pay penalties of $75,000 to the United States and $50,000 to the Commonwealth of Massachusetts for past violations. The decree also provides for stipulated penalties for any future violations of the terms and conditions of the decree.

The consent decree may be examined at: (1) The office of the United States Attorney, District of Massachusetts, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109; (2) the Office of Regional Counsel, U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Boston, Massachusetts 92203; and (3) the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515 Main Justice Building, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail at the environmental enforcement section at a cost of $1.90 per copy ($0.10 per page reproduction charge). In requesting a copy, please refer to *United States* v. *Alto-Tronics Corp.*, D.J. #90-5-1-1-2200.

The Department of Justice will receive comments concerning the decree for thirty (30) days from publication of this Notice. Comments should be addressed to the Assistant Attoreny General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should reference *United States* v. *Alto-Tronics Corp.*, D.J. #90-5-1-1-2200.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-108 Filed 1-2-85; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Consent Judgments; Alcan Aluminum Ltd., et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below two comments it received from Aluminum Company of America and Reynolds Metals Company concerning a proposed consent judgment in *United States v. Alcan Aluminum Limited, et al.*, Civil No. C-84-1028-L-A, United States District Court for the Western District of Kentucky. Also published below is the response of the United States to those comments.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Note.—Attachments A and B, consisting of newspaper articles from the Wall Street Journal, were filed as a part of the original document.

U.S. District Court, Western District of Kentucky, Louisville Division

[Civil Action No. C-84-1208-L-B]

Comments of Aluminum Company of America in Opposition to Section IV(B)6 of the Proposed Final Judgment

United States of America, Plaintiff, v. *Alcan Aluminum Limited, Alcan Aluminum Corporation, and Atlantic Richfield Company,* Defendants.

Aluminum Company of America ("Alcoa"), pursuant to the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b-h)), respectfully submits these written comments in opposition to Section IV(B)6 of the proposed Final Judgment ("Judgment" or "Decree"). The Judgment purports to allow the defendants Alcan Aluminum Limited and Alcan Aluminum Corporation ("Alcan") to acquire only up to a 40 percent interest in the Logan County, Kentucky, rolling mill ("Logan County plant" or "Logan County") now owned by the defendant Atlantic Richfield Company ("Arco"); however, Section IV(B)6 permits Alcan to avoid the 40 percent limitation by providing that "[e]ach party to the joint venture may utilize any unused portion of the other party's capacity by assuming the variable cost, but not the fixd cost, attributable to the added production."

Alco is greatly concerned about that provision for three principal reasons: *first*, it is inconsistent with the remainder of the Judgment and, if adopted, would frustrate the remedial goals the Department is seeking to achieve; *second*, it serves no necessary or useful procompetitive or economic purpose; and, *third*, it would permit Alcan to benefit from its attempted anticompetitive acquisition of the entire Logan County plant by giving it access to unused capacity on a reduced cost basis. For these reasons, Section IV(B)6 is contrary to the public interest and should be deleted from the Judgment.

Discussion

It is clear from the Complaint and Competitive Impact Statement (CIS) that the Department has determined that Alcan's acquisition of Arco's Logan County plant would substantially lessen competition in the aluminum can stock market, in violation of Section 7 of the Clayton Act (15 U.S.C. § 18). As stated in the Competitive Impact Statement, the "market for aluminum can body stock is highly concentrated," with a Herfindahl-Hirshman Index ("HHI") of "approximately 2,300 in 1983" (CIS at 6); the "Logan County plant was specifically designed to produce can stock" and has capacity to produce can body stock equal to "14.4 percent of total 1983 shipments" (*id.*); and "[b]arriers to entry into the manufacture of can body stock are high" (*id.* at 7). Because "Arco represents a significant new entrant, with a state-of-the-art rolling mill, into a highly concentrated industry" and because of high entry barriers, the lack of effective substitutes, and other factors, the Department concluded that Alcan's acquisition of Arco's entire Logan County plant would be unlawful (*id.;* Complaint ¶¶ 18-25).

The Department has undertaken to mitigate the perceived anticompetitive effects by framing a decree that would allow Alcan access to only 40 percent of the Logan County capacity. The stated objective of the Decree is to require that Arco retain sufficient capacity at Logan County so that it (or its successor) would be preserved "as a significant independent entrant into the buisness of manufacturing aluminum can body stock" (CIS at 8).

A. Section IV(B)6 Could Thwart the Decree's Key Objective of Restricting Alcan to 40 Percent of Logan County Capacity, and, Therefore, May Permit the Substantial Anticompetitive Effects Identified in the Complaint and Competitive Impact Statement.

The Competitive Impact Statement makes clear that in order to "carry out [the Decree's] objective of preserving Arco, or the successor to its interest in the Logan County plant, as a significant factor in the aluminum can body stock market" (CIS at 9), Alcan's ownership in Logan County will be limited to 40 percent and it will be allowed to use only 40 percent of Logan County's capacity. As spelled out in the Competitive Impact Statement,

> Alcan is prohibited from acquiring more than a 40 percent ownership interest in the Logan County plant, except to the extent it funds more than 40 percent of a future capital improvement in which Arco or its successor declines to participate fully. *The decree gives each party to the joint venture the right to use the capacity of the Logan County plant in proportion to its ownership interest.*

(*Id.*, emphasis added) Section IV(B)6 of the Judgment is contrary to, and would thwart, this key objective of restricting Alcan to only 40 percent of the present Logan County capacity, for it permits Alcan to utilize unused capacity, without any limitation, without financing any future capital improvement, and, indeed, without even bearing a share of the fixed cost of the unused capacity. As a result, if there is unused capacity at Logan County, Alcan will be free to use far more than the 40 percent prescribed by the Decree.

The magnitude of the incremental anticompetitive effect permitted by Section IV(B)6 is demonstrated by an HHI analysis. Assuming an Alcan market share of 13.5 percent and an Arco share of 14.4 percent (*see* CIS at 6), the proposed acquisition would result in a 389 point increase in the HHI $[(13.5+14.4)^2-(13.5^2+14.4^2)]$. This great—and clearly anticompetitive—increase in the HHI is significantly mitigated by giving Alcan access to only 40 percent of the Logan County capaicty. On that basis, its share of the Logan County capacity, if devoted to body stock, would amount to only 5.76 percent of body stock shipments $(.40\times14.4)$, and the resulting increase in the HHI is reduced to 57 points $[(13.5+5.76)^2+(8.64)^2-(13.5^2+14.4^2)]$. While this is still a significant increase in a highly concentrated market, it may be permissible for the reasons, and subject to the conditions, discussed in the Competitive Impact Statement at pages 8 to 14. On the other hand, the increase in the HHI becomes progressively greater as Alcan is given access to more than 40 percent of the Logan County capacity. For example, if Arco were to use only 50 percent of its 60 percent share of Logan County capacity, Alcan would then be able to use 70 percent of Logan County capacity for its body stock production. Using the same assumptions as before, this would translate into an increase in the HHI of approximately 186 points $[(13.5+10.08)^2+(4.32)^2-(13.5^2+14.4^2)]$.

While, to some extent, this HHI analysis necessarily rests on estimates, our estimates must closely approximate those made by the Department in determining that it would be unacceptable for Alcan to get access to more than 40 percent of the present Logan County capacity. By allowing Alcan to avoid that 40 percent limitation, Section IV(B)6 could thwart the basic remedial objective of the Decree.

B. Section IV(B)6 Serves No Necessary or Useful Procompetitive or Economic Function.

The potential anticompetitive effect of Section IV(B)6 is not countervailed by any true competitive or economic benefit. Its lack of redeeming virtue can be demonstrated by considering its effect if (i) there is no unused capacity, or (ii) Arco elects not to use all of its Logan County capacity share.

(i) *Unused capacity does not arise.* The Competitive Impact Statement states that the "decree provides an incentive for each party to utilize its capacity fully, rather than to acquiesce in the other party's use of that capacity, by requiring each party to pay for its share of the fixed cost of operating the plant irrespective of its actual utilization." (CIS at 12) Because of this provision, and the huge investment in the plant, it further states that "both Alcan and Arco will have a strong incentive to make full use of their respective utilization rights." (*Id.*) If this proves to be true, then Section IV(B)6 would be inoperative and redundant.

(ii) *Arco fails to use its full capacity share.* The possibility that Arco will elect not to use its full capacity share cannot be dismissed. Arco has made clear that the results of its metals unit have been "unsatisfactory" and that it is prepared to take a one-time net book loss of from $200 million to $300 million on the sale of its aluminum assets to Alcan. Attachment A. It has even gone so far as to advertise publicly that its experienced employees are available "for immediate consideration and placement" with other companies. Attachment B. In these circumstances, it is a dubious assumption that Arco will necessarily use its full capacity share in order to avoid the fixed cost penalty provided by the Judgment.

The only arguable benefit of Section IV(B)6 is that, if Arco does not use its full share, it may avoid having some Logan County capacity remain unused for some period of time; however, it is highly questionable that any true economic benefit would result. First of all, it is important to recognize that Arco, as the sole owner of Logan County, would have had the same incentive to make full use of the new plant's capacity. Had it chosen not to do so, however, the unused capacity would have remained idle; it would not have been diverted to use by a major body stock competitor. It is only by virtue of its attempted anticompetitive acquisition that Alcan has the opportunity, pursuant to Section IV(B)6, to use Arco's unused capacity and thereby expand its production beyond the 40 percent mandated by the Decree. Moreover, to the extent Alcan did take advantage of Section IV(B)6, it would not be responding to normal market and economic incentives. Rather, it would be the beneficiary of the extraordinary subsidy provided by Section IV(B)6. Finally, there can be no assurance that any net increase in capacity utilization would result. Alcan could simply curtail production at its older and less efficient Oswego, New York, mill and, without any fixed cost penalty, shift the same production to the modern and more efficient Logan County facility.

C. Section IV(B)6 Creates the Anomalous Possibility That Alcan Will Not Only Obtain Access to More Than 40 Percent of Logan County But Will Obtain a Significant Cost Advantage Over Alcoa and Other Aluminum Body Stock Producers.

The result of Section IV(B)6 is that Alcan may not only be allowed to use an unlimited amount of the Logan County plant capacity beyond the 40 percent specified in the decree but would be allowed to acquire such additional capacity without bearing the burden of the fixed costs. This is not the result of any capital investment, innovation, or true efficiency gain but of the unique windfall permitted by Section IV(B)6. The irony of this result is twofold: It places Alcan in a more favorable cost position than competitors that have not tried to make acquisitions of competing mills; and it places Alcan in a better cost position than if it had been permitted to acquire ownership of 100 percent of the Logan County plant, since it would then have been obliged to bear all costs of production, both fixed and variable.

Conclusion

Section IV(B)6 of the Judgment could result in Alcan's having access to more than 40 percent of Logan County's body stock capacity, contrary to the clear intent of the Judgment. The only countervailing benefit is that it may avoid there being some unused capacity at the Logan County plant; however, it is not the purpose of Section 7 of the Clayton Act to insure against the existence of unused capacity. The purpose of that statute, and of equitable relief entered pursuant thereto, is to prevent acquisitions having substantial anticompetitive effects.

The only way to avoid the potential adverse and unnatural effects of Section IV(B)6 would be to delete it. The Decree would then contain an unequivocal prohibition against Alcan's utilization of more than 40 percent of the present Logan County capacity.

Dated: December 5, 1984.

Respectfully submitted.

Bergson, Borkland, Margolis & Adler,
Howard Adler, Jr.
Barry R. Goldsmith,
11 Dupont Circle, NW., Washington, D.C. 20036, (202) 462-5930.

U.S. District Court, Western District of Kentucky, Louisville Division

[Civil Action No. C-84-1208-L-B]

Comments of Reynolds Metals Company on the Proposed Final Judgment

United States of America, Plaintiff, v. *Alcan Aluminum Limited, Alcan Aluminum*

Corporation, and Atlantic Richfield Company, Defendants.

Reynolds Metals Company ("Reynolds") endorses the approach of the Proposed Final Judgment (the "Consent Decree") which seeks to limit Alcan to a 40% interest in Arco's new can stock facility in Logan County and to require Arco (or its successor) to retain a 60% interest in the plant. Nevertheless Reynolds believes that, as presently drafted, the Consent Decree provides a loophole which improperly permits Alcan to exceed the 40% limitation on its interest in the Logan County mill. Reynolds also submits that the prophylactic provisions of the Consent Decree which regulate the extent of communications between Alcan and Arco need to be tightened to insure that both companies remain arm's-length competitors. Consequently Reynolds herewith submits a brief comment on these issues as provided by the Antitrust Procedures and Penalty Act, 15 U.S.C. § 16. Reynolds respectfully requests the parties to the Consent Decree to agree to the modifications proposed below and asks the Court to condition its approval of the Consent Decree upon acceptance of those modifications.

1. The Fundamental Illegality of the Acquisition by Alcan of a 100% Interest in Arco's Logan County Plant.

Aluminum can body stock is a sheet product used to make the bodies of beverage cans. Body stock has unique physical characteristics, means of production and pricing, and therefore constitutes a separate product market under Section 7 of the Clayton Act (15 U.S.C. § 18), as amended. Complaint ¶¶ 8–15. The body stock market of the United States is highly concentrated; there are only seven producers and the four largest producers have aggregate 1983 market shares of 87.9%. Alcan, the largest Western producer of aluminum products, is the fourth largest producer of body stock in the U.S. with a 1983 market share of 13.5%. Complaint ¶¶ 6, 16–19.

The antitrust violation arises out of Alcan's original agreement to purchase the major part of Arco's aluminum business including Arco's newly constructed rolling mill in Logan County. The Logan County mill, considered to be the "crown jewel" of Arco's aluminum assets, was designed specifically to produce body stock and to permit Arco to enter the body stock market. Once on-stream and qualified with its customers, the plant will have the capacity to produce 315 million pounds of body stock which would equal 14.4% of total 1983 shipments. Complaint ¶¶ 20–21; Competitive Impact Statement, 49 FR 40491, 40492 (October 16, 1984).

Although technically a "potential competition" case—inasmuch as the Logan County plant is presently in a break-in phase—it is readily apparent that the acquisition by Alcan of full ownership of the plant would involve the sure and certain elimination of competition on a massive scale. Under the Antitrust Division's Merger Guidelines a market with a Herfindahl index ("HHI") over 1800 is "highly concentrated" and subject to stringent antitrust scrutiny; at present, the HHI for the body stock market is approximately 2300. If Alcan were to acquire and market the Logan County plant output of body stock, the increase in the HHI would exceed 300 points; under the Merger Guidelines an increase of only 50 points in a highly concentrated market is presumptively unlawful. The clear illegality of an acquisition of this magnitude underlines the Complaint herein as well as the Antitrust Division's novel attempt to "solve" the problem through the creation of a 60–40 joint venture between two presumed competitors for the operation of the Logan County plant.

2. One Preliminary Problem: An Inadequate Record.

An initial difficulty in analyzing the effectiveness of the proposed joint venture is the unavailability of the basic acquisition agreement and related agreements between Alcan and Arco. The Joint Venture Agreement itself (Exhibit 1 to the Consent Decree) provides in Section 3.6(c) that Alcan and Arco are obligated.

> [t]o cause the Management Company [which will operate the plant] to carry out its obligations and the obligations of the Joint Venture *under the Revised Acquisition Agreement* dated as of October 1, 1984 by and between Alcan Aluminum Limited and Atlantic Richfield Company *and all agreements ancillary thereto*. [emphasis added]

Yet neither the Revised Acquisition Agreement nor any "ancillary" agreements have been disclosed [1] and the Court is being asked to approve (and the public to comment upon) a complex consent decree based on an obviously incomplete record. A review of these documents may be quite important in assessing Arco's economic incentive (or lack of same) to make use of its 60% interest or to relinquish its rights to Alcan and thereby undermine the effectiveness of the decree. Accordingly Reynolds respectfully requests that the public and the Court be permitted to review the acquisition agreement and ancillary agreements prior to any decision on whether to approve, conditionally approve or disapprove the proposed final judgment.[2]

3. The Court Should Condition Its Approval on Closing the Loophole in Section IV(B)(6) of the Consent Decree.

The Justice Department's Complaint is based on the conclusion, well-founded that Alcan's acquisiton of a 100% interest in Arco's Logan County Plan would be illegal. On the other hand, the Consent Decree is based on the assumption that the antitrust problem can be solved by limiting Alcan to a 40% interest in the plant and concommitantly maintaining Arco (or its successor) as a new entrant and viable competitor in the body stock market. If that is so, it must necessarily follow that no 60–40 joint venture is legal unless there is a factual basis on which to conclude that *in practice* the 40% owner will use *only* about 40% of the capacity of the plant—not 70% or 100%.

However, Section IV(B)(6) of the Consent Decree provides,

> Each party to the joint venture may utilize any unused portion of the other party's capacity by assuming the variable costs, but not the fixed costs, attributable to the added production.

It may be argued that it is highly unlikely that Arco will relinquish its capacity to Alcan in light of its continuing obligation ot pay fixed costs.[3] But if that is the case then surely the escape clause is unnecessary. And if Arco's incentive to use its capacity is in fact not sufficient, then this provision will have an extraordinarily perverse result: Alcan will acquire increased capacity and market share which the Antitrust Division Law already determined to be anticompetitive, and will do so on a *subsidized* basis by virtue of Arco's obligation under the Consent Decree to pay fixed costs. Consequently, Reynolds submits that Alcan's share of the joint venture should

[1] It is perhaps of some significance that an authoritative industry source, *Metals Week*, reported on October 15, 1984 that "no word" is expected from Alcan on how much it will be paying for its acquisitions from Arco under the new Consent Decree arrangements "at least until the public comment period [under the Antitrust Procedures and Penalty Act] is over."

[2] This will not impose any burden on the parties nor will it require the disclosure of confidential information. Indeed where an acquisition is effected by a purchase of securities instead of assets, or where an asset acquisition requires shareholder approval, the acquisition or merger agreement is routinely disclosed in public billings with the Securities and Exchange Commission.

[3] Whether this is true may depend on the undisclosed terms of the Revised Acquisition Agreement and tax and accounting considerations relating thereto.

be capped at 40% thereby closing the existing loophole. This will work no injustice to Alcan, which will get just what it bargained for. Nor will it work an injustice to Arco which remains free to sell its 60% share to third parties (present company excluded) if it is unwilling to continue its aluminum operations.

4. The Language of Section V of the Consent Decree Should Be Tightened to Insure that Competition Between Arco and Alcan is Preserved

Any joint venture between two competitors contains the risk that competition between them will be lessened and that the improper communication of market information will take place. The Antitrust Division is clearly aware of this risk and has properly attempted to draft a Consent Decree which will preserve a competitive relationship by limiting the nature and extent of communications between the parties.

However, Reynolds is concerned by the perhaps unintentional inconsistency between the Justice Department's Competitive Impact Statement on that subject on the one hand, and the actual language of the Consent Decree, on the other hand. Thus the Competitive Impact Statement states broadly that:

> Alcan and Arco are forbidden from agreeing or communicating with each other, directly or indirectly, or through the management company, *with regard to competitively sensitive matters, including* the parties' future production schedules for specific products, present or future terms or conditions of sale, volume of shipments, marketing plans, sales forecasts, and sales or proposed sales to specific customers. Exceptions are provided for bona fide sales transactions between Alcan and Arco and for information that is generally announced or generally published.

49 FR at 40,493 (emphasis added).

The clear purport is that (with the exceptions noted in the last sentence of the quotation) there is a general prohibition on competitively sensitive communications—as indeed there ought to be under the doctrine of *United States v. Container Corp. of America*, 393, U.S. 333 (1969).

In fact, however, the Consent Decree actually provides a more limited prohibition in Section V(A):

> Alcan and Arco shall not agree or communicate with each other, directly or indirectly, regarding each other's future production schedules for specific rolled aluminum products, present or future prices or other terms or conditions of sale, volume of shipments, marketing plans, sales forecasts, or sales or proposed sales to specific customers of aluminum products; provided, however, that nothing in this provision shall prevent Alcan and Arco from communicating with each other concerning bona fide purchase and sale transactions between them or from communicating information that is or has been generally announced or generally published.

This provision, though obviously proper in its aim, is deficient in the following respects:

(1) It contains no *general* prohibition on competitively sensitive communications, and accordingly it should be amended—in conformity with the Competitive Impact Statement, above—to read, "Alcan and Arco shall not agree or communicate with each other, directly or indirectly, *regarding competitively sensitive matters,* including *without limitation. . . .*"

(2) The current language implies that the parties may freely communicate about *current and past* production schedules, although not about future schedules. Information on current and immediate past production schedules may provide valuable and sensitive information to a competitor. Therefore Section V should be amended to provide that no confidential information on production scheduling within the past six months may be exchanged.

(3) The provisions of Section V(A) *supra* on pricing information are even worse, in that they imply that exchange of past information on prices or other terms and conditions of sale is permitted. In fact, the exchange of information on recent past prices has frequently been the basis for a charge of conspiracy to violate Section 1 of the Sherman Act; *Container Corp., supra*, is of course the classic example. Thus Section V(A) *supra* should be amended to make it clear that Alcan and Arco may not agree or communicate at all on the subject of prices or other terms or conditions of sale.

Conclusion

For the reasons stated above, Reynolds respectfully submits that the Court's approval of the Consent Decree be conditioned upon the parties' agreement to the modifications proposed by Reynolds to Section IV and V of the Decree as follows:

1. Section IV(B)(6) of the Consent Decree should be deleted, thereby capping Alcan's share of 40% of the capacity of the Logan County plant.

2. Section V(A) should be amended to read as follows:

> Alcan and Arco shall not agree or communicate with each other, directly or indirectly, regarding competitively sensitive matters, including without limitation each other's production schedules for specific rolled aluminum products (except for information relating to production more than six months prior to the communication in question), prices or other terms or conditions of sale, volume of shipments, marketing plans, sales forecasts, or sales or proposed sales to specific customers of aluminum products; provided, however, that nothing in this provision shall prevent Alcan and Arco from communicating with each other concerning bona fide purchase and sale transactions between them or from communicating information that is or has been generally published or announced.

Reynolds also requests that the parties and the Department of Justice be required to disclose the Revised Acquisition Agreement and any agreements ancillary thereto prior to any ruling by the Court on the Decree.

Respectfully submitted,

White & Case

Richard J. Holwell,

1155 Avenue of the Americas, New York, New York 10036, (212) 819-8200.

U.S. District Court, Western District of Kentucky, Louisville Division

[Civil Action No. C-84-1028-L-A]

Response of United States to Comments Relating to Proposed Final Judgment and Memorandum in Support of Entry of Final Judgment

United States of America, Plaintiff v. *Alcan Aluminum Limited, Alcan Aluminum Corporation, and Atlantic Richfield Company*, Defendants.

I. Introduction

On October 5, 1984, plaintiff filed a complaint under Section 7 of the Clayton Act, 15 U.S.C. § 18, seeking to enjoin defendant Alcan Aluminum Limited and its wholly-owned United States subsidiary Alcan Aluminum Corporation (hereinafter jointly referred to as "Alcan") from acquiring aluminum production facilities from defendant Atlantic Richfield Company (hereinafter referred to as "Arco"). The government alleged in its complaint that the acquisition of the Arco assets might substantially lessen competition in the manufacture and sale of aluminum can body stock, a sheet product used to make the bottoms and sides of beer and soft drink cans.

Simultaneously with the complaint plaintiff filed with the Court a stipulation and proposed final judgment agreed to by all parties to this litigation and the government's competitive impact statement. Because this is a civil antitrust action with the government as plaintiff, the proposed consent judgment cannot be entered until the parties have complied with the requirements of section 2 of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), and the Court has determined that entry of the proposed judgment is in the public interest.

The steps taken by the parties to comply with the Act are set out in the accompanying Certificate of Compliance with the Antitrust Procedures and Penalties Act. The stipulation, proposed final judgment, and competitive impact statement were published in the **Federal Register** on October 16, 1984. Summaries of those documents were published in The Washington Times on October 18–19 and 22–26, 1984, and in the Louisville Courier-Journal on October 17–23, 1984. The competitive impact statement and the newspaper notices invited members of the public to comment on the proposed final judgment, in accordance with 15 U.S.C. § 16(c), (d). Alcan and Arco filed the statements required by 15 U.S.C. § 2(g) on October 12 and October 15, respectively.

The comment period prescribed by 15 U.S.C. § 16(c) expired on December 17, 1984. The government received only two comments during that period. They were submitted by the Aluminum Company of America ("Alcoa") and Reynolds Metals Company ("Reynolds"). The comments and the government's response have been submitted to the **Federal Register** for publication. The comments were previously filed with the Court.

The parties have fulfilled their duties under the Antitrust Procedures and Penalties Act. Plaintiff has carefully considered the comments submitted by Alcoa and Reynolds and concluded that they do not warrant withdrawal of its consent to entry of the decree. Thus the Court may now enter the proposed final judgment if it finds the settlement to be in the public interest. Part III of this memorandum discusses the legal standard for the Court's public interest determination and the information available to the Court in evaluating the proposed final judgment.

II. Response to Comments

Alcoa objects to only one section of the proposed judgment, IV(B)(6), which provides:

> Each party to the joint venture may utilize any unused portion of the other party's capacity by assuming the variable costs, but not the fixed costs, attributable to the added production.

Its objection is three-fold. First, Alcoa believes IV(B)(6) is inconsistent with the remainder of the judgment and could frustrate its objectives. Second, Alcoa believes the provision serves no procompetitive or economic purpose. Third, Alcoa fears that IV(B)(6) will give Alcan an undeserved windfall by permitting Alcan to use substantially more than its assigned 40 percent of the Logan County plant, at costs substantially lower than its competitors must bear.

The proposed judgment provides that Arco's Logan County rolling mill will be operated as a production joint venture between Alcan (40 percent equity interest) and Arco (60 percent equity interest). The Logan County plant, which was designed to produce can stock, was completed in October 1983. This plant marks Arco's entry into the production of can body stock, a highly concentrated business in which the top four manufacturers—Alcoa, Reynolds, Kaiser, and Alcan—accounted for 87.9 percent of all United States sales in 1983.

In negotiating the proposed judgment the government concluded that Arco's retention of a 60 percent interest in the Logan County plant would give it sufficient capacity to become a significant producer of body stock. By making it the majority owner of the facility and of the management company which will operate the facility, the government sought to preserve Arco's independence. Maintaining Arco or its successor as a significant, independent factor in the market for can body stock was the central purpose of this lawsuit and of the proposed decree.

The government was aware when the decree was being negotiated that section IV(B)(6) could affect the 60/40 split of the plant's capacity established by the decree; however, it considered section IV(B)(5)—which states that each party is to bear its full share of the plant's fixed costs—adequate protection against abuse of the option granted under IV(B)(6). Each party's share of the fixed costs is determined by its equity interest. Section IV(B)(5) specifically prohibits each party from reimbursing the other for any part of its fixed costs. In addition, a definition of fixed costs is incorporated into the proposed judgment to ensure that the parties cannot alter the cost allocation by redesignating fixed costs as variable costs. Fixed costs are defined to include a substantial share of the total costs of production.

Between its nonreimbursable fixed costs and its approximately $250 million investment in its retained portion of the plant, Arco will have a powerful financial incentive to use all of its available capacity. Even if Arco is unable to sell all the body stock it can produce, it will be free to use its capacity to produce other rolled aluminum products, and it will likely choose to do so, since these large fixed costs cannot be avoided by allowing its share of the plant to lie idle. Collusion between the parties to alter the 60/40 ratio by the use of IV(B)(6) is conceivable only if it involves payment of compensation to the party surrendering a portion of its capacity, and such an arrangement would violate the decree. Consequently, the government believes there is little risk of deliberate abuse of IV(B)(6) by the defendants.

There remains the possibility that market conditions will preclude one of the joint ventures, presumably Arco, from using its full share of the plant despite the financial penalty entailed. If this is a short term phenomenon, it can be offset by higher levels of production at other times, allowing the overall 60/40 split to be maintained on an annual basis. Some variation in orders is likely and can be handled by the plant manager's scheduling of the parties' production runs.

Section IV(B)(6) would become relevant only if the shortfall is substantial and continuous. In that event, the public interest is best served by allowing the other party to make use of the unused portion of the plant's capacity. Maximizing production at the Logan County plant encourages increased production of can stock and other rolled aluminum products, thus tending to lower prices.

In sum, the government believes that section IV(B)(6) is not likely to cause a substantial or prolonged alteration in the 60/40 ration established by the decree. Whatever use is made of that provision will almost certainly be preferable to the alternative of having a portion of the plant lie idle. In the unlikely event that section IV(B)(6) results in a major and continuing alteration in the character of the joint venture, to the point of subverting the decree's objective of preserving Arco as a significant, independent competitor, the government would be able to seek a modification of the decree from the Court. This remote possibility does not require a change in the decree as currently drafted. Whatever slight risk section IV(B)(6) entails is greatly outweighed by its likely benefits.

Reynolds objects to section IV(B)(6) on grounds similar to those stated by Alcoa. In addition, Reynolds objects to the language of section V of the decree, which prohibits the exchange of certain types of information by Alcan and Arco. Reynolds asks that a general prohibition be added to that section forbidding the exchange of "competitively sensitive communications," with the current list of forbidden subjects included only as examples. Reynolds specifically expresses concern that discussions of current and past production schedules and past pricing information are not prohibited.

As with section IV(B)(6), the government weighed the advantages and disadvantages of section V before consenting to its inclusion in the proposed judgment. Its purpose was to limit the information exchanged between these competitors, while at the same time allowing them to exchange enough information so that the joint venture can function effectively. For example, the exchange of current and past production schedules is not prohibited because the government concluded that the smooth operation of the facility would require the parties to share such data.

The government would oppose a general ban on the exchange of "competitively sensitive information." That language is so broad that its inclusion could well make it impossible for the joint venture to operate. In addition, the vagueness of the language would make the section difficult to enforce.

Section V as presently worded adequately prevents the exchange of the types of information that would allow the parties to the joint venture to engage in price fixing. There is no need for a modification of the section's language.

Reynolds also asks that the acquisition agreement between Alcan and Arco be made public. While the government would not object to that disclosure, we do not believe it is necessary for a full and complete evaluation of the proposed judgment. To the extent that any provision of the agreement is contrary to the judgment, that provision is invalid and is superceded by the judgment. More importantly, the voluminous documents that were affixed to the proposed judgment are sufficient to disclose how the venture will operate and whether any aspect of that operation will be objectionable.

III. The Court's Public Interest Determination

Note.—Deleted from Federal Register publication.

IV. Conclusion

The comments do not raise serious doubts that the settlement is in the public interest, and the issues raised do not warrant further proceedings. Plaintiff therefore respectfully requests the Court to enter the proposed final judgment, as provided for in the stipulation signed by all parties to this lawsuit.

Dated: December 26, 1984.

Respectfully submitted,

Angela L. Hughes,

Attorney, United States Department of Justice, Antitrust Division, Washington, D.C. 20530, (202) 724-6486.

[FR Doc. 85-185 Filed 1-2-85; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Combined Subcommittees on Reactor Radiological Effects and Site Evaluation; Meeting

The ACRS Subcommittees on Reactor Radiological Effects and Site Evaluation will hold a combined meeting on January 3 and 4, 1985, in Room 1046, 1717 H Street, NW, Washington, D.C.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, January 3, 1985—8:30 a.m. until the conclusion of business

Friday, January 4, 1985—8:30 a.m. until the conclusion of business

The Subcommittees will review (1) Proposed Amendments to 10 CFR Part 50, Section 50.47 and Appendix E: Consideration of Earthquakes in the Context of Emergency Preparedness. Item (2), Proposed Amendments to 10 CFR Parts 30, 40 and 70: Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees, has been deleted from consideration at this meeting.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittees will then hear presentations by and hold discussions with the NRC Staff and other invited experts on the above-named topic.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 28, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-164 Filed 1-2-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-602]

University of Texas; Proposed Issuance of Construction Permit and Facility Operating License

The Nuclear Regulatory Commission (the Commission) is considering the issuance of a construction permit and subsequently a facility operating license to the University of Texas (the applicant) in Austin, Texas. The permit would authorize the applicant to construct for educational training and research purposes a nuclear research reactor (the facility) at the University's Balcones Research Center in Austin, Texas. The license would authorize the applicant to operate the reactor at steady-state power levels not in excess of 1 Megawatt thermal, with pulsing levels not in excess of 1400 Megawatts thermal.

Prior to issuance of the construction permit, the Commission will have made the findings required by the Act and the Commission's rules and regulations.

Upon completion of the construction of the facility in Austin, Texas, in compliance with the terms and conditions of the construction permit and the application, as amended, and in the absence of good cause to the contrary, the Commission will issue to the applicant (without prior notice) a class 104c facility license authorizing operation of the nuclear research reactor at the power levels specified above, since the application is complete enough to permit evaluation of the safety and environmental impact of the operation of the facility in the manner and location proposed. Prior to the issuance of the license, the facility will be inspected by